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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
AVNER MALOUL and ALLEN LOWY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 07 CIV 8525 (LBS)
	:	ECF CASE
	:	
IVAN BERKOWITZ, GREAT COURT	:	
CAPITAL, LLC, SD PARTNERS, LLC, UTIX	:	ANSWER AND AFFIRMATIVE
GROUP, INC., VSUS TECHNOLOGIES, INC.	:	<u>DEFENSES OF UTIX GROUP, INC.</u>
and SUNSET BRANDS, INC.,	:	
	:	
Defendants.	:	
-----	X	

The Utix Group, Inc. ("Utix"), on personal knowledge as to itself and otherwise on information and belief, for its Answer to the Complaint in this matter, hereby avers as follows:

1. Utix is without information sufficient to form a belief respecting the allegations set forth in the First Paragraph of the Plaintiffs' Complaint, to the extent that those allegations are directed to parties other than Utix. In further answering, Utix hereby denies allegations directed to it set forth in the First Paragraph of the Plaintiffs' Complaint.

2. The allegations set forth in the Second Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in the Second Paragraph of the Plaintiffs' Complaint.

3. The allegations set forth in the Third Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in the Third Paragraph of the Plaintiffs' Complaint.

4. The allegations set forth in the Fourth Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in the Fourth Paragraph of the Plaintiffs' Complaint.

5. Utix is without information sufficient to form a belief respecting the allegations set forth in the Fifth Paragraph of Plaintiffs' Complaint.

6. Utix is without information sufficient to form a belief respecting the allegations set forth in the Sixth Paragraph of Plaintiffs' Complaint.

7. Utix is without information sufficient to form a belief respecting the allegations set forth in the Seventh Paragraph of Plaintiffs' Complaint.

8. Utix is without information sufficient to form a belief respecting the allegations set forth in the Eighth Paragraph of Plaintiffs' Complaint.

9. Utix is without information sufficient to form a belief respecting the allegations set forth in the Ninth Paragraph of Plaintiffs' Complaint.

10. Utix is without information sufficient to form a belief respecting the allegations set forth in the Tenth Paragraph of Plaintiffs' Complaint.

11. Admitted.

12. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twelfth Paragraph of Plaintiffs' Complaint.

13. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirteenth Paragraph of Plaintiffs' Complaint.

14. The Fourteenth Paragraph of Plaintiffs' Complaint is a paragraph providing definition to the reader, and thus does not require a further response. To the extent that it does require a further response, the allegations set forth therein are denied.

15. The allegations set forth in the Fifteenth Paragraph are directed to the Berkowitz Defendants, and therefore do not require a response from Utix. To the extent that a further response is required, Utix denies the allegations set forth in the Fifteenth Paragraph of Plaintiffs' Complaint.

16. Utix is without information sufficient to form a belief respecting the allegations set forth in the Sixteenth Paragraph of Plaintiffs' Complaint.

17. Utix is without information sufficient to form a belief respecting the allegations set forth in the Seventeenth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Seventeenth Paragraph of Plaintiffs' Complaint.

18. Utix is without information sufficient to form a belief respecting the allegations set forth in the Eighteenth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Eighteenth Paragraph of Plaintiffs' Complaint, including those contained in the Paragraph 18(b).

19. Utix is without information sufficient to form a belief respecting the allegations set forth in the Nineteenth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Nineteenth Paragraph of Plaintiffs' Complaint.

20. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twentieth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twentieth Paragraph of Plaintiffs' Complaint.

21. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-First Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-First Paragraph of Plaintiffs' Complaint.

22. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Second Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Second Paragraph of Plaintiffs' Complaint.

23. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Third Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Third Paragraph of Plaintiffs' Complaint.

24. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Fourth Paragraph of Plaintiffs' Complaint. To the extent that a further

response is required, Utix denies the allegations set forth in the Twenty-Fourth Paragraph of Plaintiffs' Complaint.

25. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Fifth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Fifth Paragraph of Plaintiffs' Complaint. In further answering, the allegations set forth in the Twenty-Fifth Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required.

26. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Sixth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Sixth Paragraph of Plaintiffs' Complaint. In further answering, the allegations set forth in the Twenty-Sixth Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required.

27. The allegations set forth in the Twenty-Seventh Paragraph of Plaintiffs' Complaint set forth a legal conclusion as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Seventh Paragraph.

28. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Eighth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Eighth Paragraph of Plaintiffs' Complaint.

29. Utix is without information sufficient to form a belief respecting the allegations set forth in the Twenty-Ninth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Twenty-Ninth Paragraph of Plaintiffs' Complaint.

30. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirtieth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirtieth Paragraph of Plaintiffs' Complaint.

31. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-First Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-First Paragraph of Plaintiffs' Complaint.

32. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Second Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Second Paragraph of Plaintiffs' Complaint.

33. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Third Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Third Paragraph of Plaintiffs' Complaint.

34. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Fourth Paragraph of Plaintiffs' Complaint. To the extent that a further

response is required, Utix denies the allegations set forth in the Thirty-Fourth Paragraph of Plaintiffs' Complaint.

35. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Fifth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Fifth Paragraph of Plaintiffs' Complaint.

36. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Sixth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Sixth Paragraph of Plaintiffs' Complaint.

37. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Seventh Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Seventh Paragraph of Plaintiffs' Complaint.

38. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Eighth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Eighth Paragraph of Plaintiffs' Complaint.

39. Utix is without information sufficient to form a belief respecting the allegations set forth in the Thirty-Ninth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Thirty-Ninth Paragraph of Plaintiffs' Complaint.

40. Utix is without information sufficient to form a belief respecting the allegations set forth in the Fortieth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Fortieth Paragraph of Plaintiffs' Complaint.

41. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-First Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Forty-First Paragraph of Plaintiffs' Complaint.

42. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-Second Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Forty-Second Paragraph of Plaintiffs' Complaint.

43. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-Third Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Forty-Third Paragraph of Plaintiffs' Complaint.

44. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-Fourth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Forty-Fourth Paragraph of Plaintiffs' Complaint.

45. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-Fifth Paragraph of Plaintiffs' Complaint. To the extent that a further

response is required, Utix denies the allegations set forth in the Forty-Fifth Paragraph of Plaintiffs' Complaint.

46. Utix is without information sufficient to form a belief respecting the allegations set forth in the Forty-Sixth Paragraph of Plaintiffs' Complaint. To the extent that a further response is required, Utix denies the allegations set forth in the Forty-Sixth Paragraph of Plaintiffs' Complaint.

47. Utix denies the allegations set forth in the Forty-Seventh Paragraph of Plaintiffs' Complaint.

COUNT I

48. Utix hereby repeats and realleges the responses to Paragraphs 1 - 47 of Plaintiffs' Complaint as if fully set forth herein.

49. Utix is without knowledge sufficient to form a belief respecting the allegations set forth in Paragraph 49 of Plaintiffs' Complaint, and in any event this Paragraph sets forth legal conclusions to which no response is required. To the extent that a further response is required, Utix denies each and every allegation set forth in Paragraph 49 of Plaintiffs' Complaint.

50. Utix is without knowledge sufficient to form a belief respecting the allegations set forth in Paragraph 50 of Plaintiffs' Complaint, and in any event this Paragraph sets forth legal conclusions to which no response is required. To the extent that a further response is required, Utix denies each and every allegation set forth in Paragraph 50 of Plaintiffs' Complaint.

51. Utix denies the allegations set forth in Paragraph 51 of Plaintiffs' Complaint.

52. Utix denies the allegations set forth in Paragraph 52 of Plaintiffs' Complaint.

53. Utix is without knowledge sufficient to form a belief respecting the allegations set forth in Paragraph 53 of Plaintiffs' Complaint, and in any event this Paragraph sets forth legal

conclusions to which no response is required. To the extent that a further response is required, Utix denies each and every allegation set forth in Paragraph 53 of Plaintiffs' Complaint.

54. Utix denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint.

55. Utix is without knowledge sufficient to form a belief respecting the allegations set forth in Paragraph 55 of Plaintiffs' Complaint, and in any event this Paragraph sets forth legal conclusions to which no response is required. To the extent that a further response is required, Utix denies each and every allegation set forth in Paragraph 55 of Plaintiffs' Complaint.

56. The allegations set forth in Paragraph 56 of the Plaintiffs' Complaint set forth legal conclusions as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in Paragraph 56 of the Plaintiffs' Complaint.

57. The allegations set forth in Paragraph 57 of the Plaintiffs' Complaint set forth legal conclusions as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in Paragraph 57 of the Plaintiffs' Complaint.

58. The allegations set forth in Paragraph 58 of the Plaintiffs' Complaint set forth legal conclusions as to which no response is required. To the extent that a further response is required, Utix denies the allegations set forth in Paragraph 58 of the Plaintiffs' Complaint.

COUNT II

59. Utix hereby repeats and realleges the responses to Paragraphs 1 - 58 of Plaintiffs' Complaint as if fully set forth herein.

60. Paragraph 60 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 60 of Plaintiffs' Complaint.

61. Paragraph 61 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 61 of Plaintiffs' Complaint.

62. Paragraph 62 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 62 of Plaintiffs' Complaint.

63. Paragraph 63 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 63 of Plaintiffs' Complaint.

64. Paragraph 64 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 64 of Plaintiffs' Complaint.

65. Paragraph 65 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 65 of Plaintiffs' Complaint.

66. Paragraph 66 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 66 of Plaintiffs' Complaint.

67. Paragraph 67 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 67 of Plaintiffs' Complaint.

68. Paragraph 68 of Plaintiffs' Complaint is not directed at Utix, and therefore does not require any response. To the extent that a further response is required, Utix hereby denies each and every allegation set forth in Paragraph 68 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to satisfy the pleading requirements of Fed. R. Civ. P. 9(b).

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is untimely in that it was not filed within the appropriate limitations period.

FOURTH AFFIRMATIVE DEFENSE

The claims alleged by the Plaintiffs herein were released and fully satisfied pursuant to a Settlement Agreement and Release made as of December 18, 2006 (a complete copy of which was sent to Plaintiffs' counsel of record in this matter on December 17, 2007, and is incorporated herein by reference).

FIFTH AFFIRMATIVE DEFENSE

The damages complained of herein were not caused in whole or in part by Utix.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Utix are barred because they were not asserted after a reasonable investigation or were otherwise not asserted in good faith.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred against Utix on jurisdictional grounds.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of laches.

PRAYERS FOR RELIEF

WHEREFORE, Defendant, Utix Group, Inc., respectfully requests that the Court enter judgment in its favor and against the Plaintiffs, Avner Maloul and Allen Lowy, on all counts of the Complaint as follows:

- A. Entering judgment in Utix's favor and against Plaintiffs with prejudice on all counts and claims directed to Utix;
- B. Awarding Utix its reasonable attorney's fees, costs and interest; and,
- C. Allowing such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 28, 2007

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

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*Attorneys For Defendant
Utix Group, Inc.*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document entitled *Answer and Affirmative Defenses of Utix Group, Inc.*, dated December 28, 2007, was served on December 28, 2007, via electronic mail, and on December 29, 2007, via the Court's ECF system upon:

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/Scott J. Pashman

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